

SRP & Zuni Tribe Underground Water Agreement

THIS AGREEMENT, dated as of June 7, 2002, is entered into among the Salt River Project Agricultural Improvement and Power District, ("SRP"); the Zuni Indian Tribe and its members, ("Tribe" or "Zuni Tribe"); and the United States of America, on behalf of the Zuni Tribe, ("United States on behalf of the Tribe").

WHEREAS, the parties to this Agreement and others have entered into an agreement dated June 7, 2002 (the "Settlement Agreement"), which references in paragraph 5.8 this Agreement, to settle and forever resolve the rights of the Zuni Tribe and of the United States on behalf of the Tribe to underground water and surface water in the Little Colorado River System and Source in the State of Arizona, and;

WHEREAS, this Agreement recognizes the terms and conditions which apply when SRP withdraws underground water for uses at the Coronado Generating Station plant site in St. Johns, Arizona, as well as for other future uses in the Little Colorado River basin in Arizona, without objection by the Zuni Tribe or by the United States on behalf of the Tribe.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS CONTAINED IN THIS AGREEMENT, IT IS AGREED THAT:

1. Definitions

For the purposes of this Agreement:

- 1.1. "AFA" means acre-feet per annum.
- 1.2. "Coronado Generating Station" means the existing electrical generating facility at the Coronado Generating Station Site as well as any expansions or replacements of the existing facility located anywhere within the LCR basin.
- 1.3. "Coronado Generating Station Site" means lands owned by SRP in Sections 27, 29, 33 and 34, Township 14 North, Range 29 East, Gila and Salt River Base and Meridian; Sections 3, 4, 5, 6, 7, 8, 9, and 10, Township 13 North, Range 29 East, Gila and Salt River Base and Meridian; and Sections 1, 3, 11 and 12, Township 13 North, Range 28 East, Gila and Salt River Base and Meridian, together with any contiguous lands that SRP may acquire in the future.
- 1.4. "Eastern LCR Decree" means that portion of the decree entered in the Little Colorado River Adjudication that includes water rights in the Eastern Little Colorado River area, which includes the portion of the LCR basin upstream from the confluence of Silver Creek and the Little Colorado River.
- 1.5. "Hazardous Substance" means those substances included within the definition of that term under 42 U.S.C. § 9601(14), as it now exists or as it may be amended.

1.6 “LCR basin” means the Little Colorado River basin in Arizona.

1.7 “Oil” means those substances included within the definition of that term under 33 U.S.C. § 2701 (23), as it now exists or as it may be amended.

1.8 “Static Water Level Decline” must be determined by comparing the average annual static water level with the existing static water level in the regional aquifer (presently referred to as the “C Aquifer”), as measured at an agreed on well site. Static water level measurements must be taken annually on or about March 1; provided that the well in which the measurements are to be taken, and any Zuni well within one-half mile of that measurement well pumping from the C Aquifer, has not been operated at any time during the four months immediately preceding the date of measurement. If the measurement well or any Zuni well within one-half mile of that measurement well pumping from the C aquifer has been operated in the four months preceding the date of measurement, other water level measurements taken at the well must be used to establish a static water level acceptable to both the Zuni Tribe and SRP. The point of measurement must always be a well existing on the enforcement date of the Settlement Agreement in the south half of Section 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian that the parties to this Agreement agree to use, or, in the future, a mutually agreed upon replacement well in the south half of Section 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian. The existing static water level must be determined by the static water level measurement taken following the date this Agreement becomes enforceable. The average annual static water level must be determined on the basis of a continuous 3 year rolling average of the annual static water level measurement in the well. The Zuni Tribe or the United States on behalf of the Tribe shall take the static water level measurements and provide SRP with a written report of the results within 30 days of each measurement. The Zuni Tribe shall provide reasonable access to the measuring well for verification and monitoring purposes.

1.9 “TDS” means total dissolved solids.

1.10 “Zuni Indian Reservation in Arizona,” also referred to as Zuni Heaven Reservation and Kolhu:wala:wa, refers to the following property in Apache County, Arizona: Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

1.11 “Zuni Lands” means all the following lands in Arizona (as identified on Exhibit A, attached and incorporated into this Agreement) that on the date the Settlement Agreement becomes enforceable are

- A. within the Zuni Indian Reservation in Arizona;
- B. held in trust by the United States for the benefit of the Tribe or its members; or
- C. held in fee by or for the Tribe.

2. Term

2.1 Enforceable Date. This Agreement shall become enforceable on the date that the Settlement Agreement becomes enforceable, and shall remain enforceable until the water uses authorized in paragraph 7.6 permanently cease.

3. Zuni Tribe Underground Water Use

3.1 Zuni Use. SRP recognizes, confirms, and shall not object to, dispute or challenge the withdrawal and use of up to an annual average of 1,500 AFA of underground water by the Zuni Tribe or by the United States on behalf of the Tribe from the Zuni Pumping Lands, identified on Exhibit A. The annual average pumping shall be determined by a continuous 3 year rolling average of the pumping from each calendar year.

3.2 If the Zuni Tribe or the United States on behalf of the Tribe withdraws more than an annual average of 1,500 AFA of underground water from wells located on the Zuni Pumping Lands and SRP is not pumping more than 21,000 AFA of underground water from wells in the LCR basin supplying the Coronado Generating Station, then the Zuni Tribe and the United States on behalf of the Tribe waive permanently all their rights under federal and tribal law, including but not limited to any rights based on aboriginal claims or federal reserved rights to groundwater in Arizona, to object to, dispute, or challenge SRP's withdrawals of underground water in the LCR basin of an amount up to 21,000 AFA. Nevertheless, regardless of the amount of water the Zuni Tribe or the United States on behalf of the Zuni Tribe is pumping, the Zuni Tribe and the United States on behalf of the Tribe retain the same rights as any non-Indian, non-federal groundwater user in Arizona to object, only as permitted under state law affecting groundwater, whether statutory or common law, to SRP's withdrawals of underground water in the LCR basin in excess of 15,000 AFA. If SRP withdraws more than 21,000 AFA from wells in the LCR basin supplying The Coronado Generating Station, then the Zuni Tribe and the United States retain all rights to object to, dispute, or challenge, as provided in paragraph 6.1, only the portion of those withdrawals greater than 21,000 AFA.

3.3 Future Rights within Zuni Pumping Lands. Except as provided in this Agreement, the Zuni Tribe and the United States on behalf of the Tribe retain the right to initiate new withdrawals of underground water or to expand existing withdrawals of underground water above an annual average of 1,500 AFA on the Zuni Pumping Lands.

3.4 Future Rights outside Zuni Pumping Lands. Except as provided in paragraph 7.2, the Zuni Tribe or the United States on behalf of the Zuni Tribe may initiate new withdrawals of underground water on the Zuni Lands located outside of the Zuni Pumping Lands, and on any lands located outside the Zuni Pumping Lands acquired in the future either by or for the Zuni Tribe.

4. SRP Underground Water Use: 0 – 15,000 AFA

4.1 Zuni Tribe Objections. The Zuni Tribe and the United States on behalf of the Tribe recognize, confirm, and shall not object to, dispute or challenge SRP's

withdrawal and use of a maximum of 15,000 AFA of underground water withdrawn from wells in the LCR basin supplying water to the Coronado Generating Station for uses authorized in paragraph 7.6, unless the Tribe or the United States on behalf of the Tribe proves in the court administering the Eastern LCR Decree that SRP's withdrawal of a maximum of 15,000 AFA of underground water is causing a Static Water Level Decline in excess of 75 feet.

4.2 SRP may withdraw this 15,000 AFA whether the water withdrawn from those wells is surface water, groundwater or is legally appropriable, non-appropriable, or subject to claims based on federal law. The withdrawal of 15,000 AFA or less of water in any year or series of years, both prior to and after the date of this Agreement, shall not affect SRP's right to withdraw its full entitlement to 15,000 AFA in subsequent years.

4.3 Claims and Remedies. If the Zuni Tribe or the United States on behalf of the Tribe is not withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands and if the Zuni Tribe or the United States on behalf of the Tribe proves a Static Water Level Decline in excess of 75 feet caused by SRP's withdrawal of a maximum of 15,000 AFA of underground water from wells supplying the Coronado Generating Station, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim it may have under state or federal law for injuries to it for the amount of Static Water Level Decline in excess of 75 feet that is caused by SRP's withdrawals. If the Zuni Tribe or the United States on behalf of the Tribe is withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe shall only assert claims under this paragraph 4.3 based on state law. The remedies available to the Zuni Tribe and to the United States on behalf of the Tribe against SRP shall be limited to compensatory damages and shall not include injunctive relief. SRP shall have the right, if it chooses, at its sole discretion, to avoid liability for payment of damages by reasonably mitigating the impacts of its withdrawals. In addition, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim retained in paragraph 11.4 of the Settlement Agreement.

5. SRP Underground Water Use: 15,001 – 21,000 AFA

5.1 Claims. Except as provided in paragraph 5.2, and if the Zuni Tribe or the United States on behalf of the Tribe is not withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim it may have under state or federal law for injuries to it caused by SRP's withdrawal and use of underground water in amounts greater than 15,000 AFA but no more than 21,000 AFA. If the Zuni Tribe or the United States on behalf of the Tribe is withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe shall only assert claims under this paragraph 5.1 based on state law.

5.2 Water Quality Claims. If the Zuni Tribe or the United States on behalf of the Tribe is not withdrawing more than an annual average of 1,500 AFA of underground

water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe may also assert any claim it may have under state or federal law for damages to the quality of underground water beneath the Reservation caused by SRP's withdrawal or use of underground water in excess of 15,000 AFA but no more than 21,000 AFA if all of the conditions precedent in subparagraphs 5.2.A, B, and C are satisfied. If the Zuni Tribe or the United States on behalf of the Tribe is withdrawing more than an annual average of 1,500 AFA of underground water from wells on the Zuni Pumping Lands, the Zuni Tribe or the United States on behalf of the Tribe shall only assert claims under this paragraph 5.2 based on state law.

A. The Static Water Level Decline caused by SRP's withdrawals must be in excess of 75 feet.

B. The TDS in the regional aquifer beneath the Reservation has reached 3000 mg/l and the increase is causing significant harm to species native to the area on the Reservation. TDS levels are based on a continuous 3 year rolling average of the annual TDS measurement.

C. The Zuni Tribe or the United States must measure TDS annually from a well in the south half of Section 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian, to be agreed on by the parties; this may be a different well than the well used to measure Static Water Level Decline. Water samples for TDS measurements must be taken using standard sampling protocols. TDS may be estimated annually by electrical conductivity, but only annual tests performed by an Arizona state certified lab may be used to compute TDS in subparagraph 5.2(B). The Zuni Tribe or the United States on behalf of the Tribe shall report to SRP the results of the annual TDS measurement within 30 days of each measurement. The Zuni Tribe shall provide reasonable access to the measuring well for verification and monitoring purposes.

5.3 Remedies. The remedies available to the Zuni Tribe and to the United States on behalf of the Tribe against SRP for claims permitted under paragraph 5.1 and paragraph 5.2 shall be limited to compensatory damages and shall not include injunctive relief. Furthermore, for claims asserted pursuant to paragraphs 5.1 and 5.2, SRP shall have the right, if it chooses, at its sole discretion, to avoid liability for payment of damages by reasonably mitigating the impacts of its withdrawals. Furthermore, the remedies of the Zuni Tribe or of the United States on behalf of the Tribe under paragraph 5.1 and under paragraph 5.2 are limited to the damage caused by the impact of the portion of SRP's withdrawals that are in excess of 15,000 AFA but no more than 21,000 AFA.

5.4 In addition to the claims permitted under paragraphs 5.1 and 5.2, the Zuni Tribe or the United States on behalf of the Tribe may assert any claim retained in paragraph 11.4 of the Settlement Agreement.

6. SRP Underground Water Use: 21,001 AFA or more

6.1 Claims and Remedies. If SRP is withdrawing more than 21,000 AFA of underground water from wells supplying the Coronado Generating Station, and irrespective of the amount of underground water that is withdrawn by the Zuni Tribe or the United States on behalf of the Tribe on Zuni Pumping Lands, the Zuni Tribe and the United States on behalf of the Tribe retain all rights and claims, including all water quality claims, under federal and state law to object to the portion of SRP's withdrawal and use of underground water in excess of 21,000 AFA.

6.2 Future Rights. Except as provided in this Agreement, SRP retains the right to initiate new withdrawals of underground water or to expand existing withdrawals of underground water above 21,000 AFA.

7. Other Provisions

7.1 SRP Well Placement. SRP shall be permitted to maintain, operate, repair, deepen and replace existing wells and drill, maintain, operate, repair, deepen and replace future wells. Nevertheless, SRP shall not locate any replacement wells or new wells developed for the future use of underground water within the SRP Exclusion Area identified on Exhibit A.

7.2 Zuni Tribe Well Placement. The Zuni Tribe or the United States on behalf of the Tribe shall be permitted to maintain, operate, repair, deepen and replace existing wells and drill, maintain, operate, repair, deepen and replace future wells. Nevertheless, the Zuni Tribe and the United States on behalf of the Tribe shall not locate any replacement wells or new wells developed for the future use of underground water within the Zuni Exclusion Area identified on Exhibit A.

7.3 Measurements. The Zuni Tribe or the United States on behalf of the Tribe shall install and maintain industry-standard flow measurement devices on all active wells located on Zuni Lands having a pumping capacity greater than 35 gallons per minute. SRP shall also install and maintain industry-standard flow measurement devices on all active wells located in the LCR basin supplying the Coronado Generating Station that have a pumping capacity greater than 35 gallons per minute. SRP and the Zuni Tribe or the United States on behalf of the Tribe shall exchange annual pumping amounts for each active well (which must include estimates of water use for any unmeasured well) and static water levels each year on approximately April 1.

7.4 Water Quantity Data. Beginning with the date this Agreement is enforceable, SRP and the Zuni Tribe shall provide each other with water quantity data as provided for in this paragraph 7.4.

A. SRP's Water Quantity Data. The Zuni Tribe may request from SRP water quantity data for any active wells in the LCR basin pumping underground water for the Coronado Generating Station. Within 30 calendar days of its receipt of the request, SRP shall provide to the Zuni Tribe all water quantity data SRP has collected for the specified wells in the one-year period preceding the

request. The Zuni Tribe, and the United States on behalf of the Zuni Tribe, must keep that data confidential, except to the extent disclosure is required by law.

B. Zuni Tribe's Water Quantity Data. SRP may request from the Zuni Tribe or from the United States on behalf of the Zuni Tribe water quantity data for any active wells pumping underground water on Zuni Lands. Within 30 calendar days of receipt of the request the Zuni Tribe or the United States on behalf of the Zuni Tribe shall provide to SRP all water quantity data collected for the specified wells in the one-year period preceding the request. SRP must keep that data confidential except to the extent disclosure is required by law.

C. Data Included. The water quantity data to be provided by the Parties upon request includes, but is not limited to, pumping schedules, well logs, and results of pump tests.

7.5 Water Quality Data. In addition to the data that SRP provides to the Zuni Tribe under paragraph 5.11 of the Settlement Agreement, beginning with the date this Agreement is enforceable, SRP and the Zuni Tribe shall provide each other with water quality data, and consult with each other regarding water quality in some circumstances, as provided for in this paragraph 7.5.

A. Provision of Water Quality Data. When SRP submits water quality data for wells pumping underground water for the Coronado Generating Station to the Arizona Department of Environmental Quality ("DEQ"), the Arizona Department of Water Resources ("DWR"), or the United States Environmental Protection Agency ("USEPA"), SRP shall provide the Zuni Tribe with a copy. When the Zuni Tribe or the United States on behalf of the Zuni Tribe submits water quality data for wells on Zuni Lands to DEQ, DWR, or USEPA, the Zuni Tribe shall provide SRP with a copy. The copies must be provided at the same time the data is provided to the department or agency, or within fifteen working days thereafter.

B. Consultation. SRP and the Zuni Tribe agree to consult with each other if any data provided under subparagraph 7.5.A demonstrates the presence of a Hazardous Substance or constituents of Oil in an amount greater than an Arizona Numeric Aquifer Water Quality Standard or a Maximum Contaminant Level established by the USEPA. SRP and the Zuni Tribe may agree to cooperate in further investigating or responding to any contamination, but nothing in this Agreement requires SRP or the Zuni Tribe to agree or to take any action in response.

7.6 Authorized SRP Water Uses.

A. Underground water withdrawn pursuant to this Agreement may be used by SRP only for electrical power generation at the Coronado Generating Station and industrial, domestic, recreational and stock watering uses on the Coronado Generating Station Site. Stock watering through connections to SRP's

water pipeline from its wellfields to the Coronado Generating Station is also a permissible use.

B. Usage of underground water pursuant to this Agreement for electrical power generation may continue until operations at the Coronado Generating Station permanently cease. When power generation permanently ceases, usage of underground water for industrial, domestic, recreational and stock watering uses on the Coronado Generating Station Site by SRP and its tenants or customers as provided in subparagraph 7.7.B shall not exceed 7,500 AFA.

C. SRP shall not sell, lease, transfer, or transport underground water subject to this Agreement outside the LCR basin.

7.7 SRP Assignment.

A. SRP may assign or transfer, without the necessity of consent by the Zuni Tribe or by the United States on behalf of the Tribe, all or any portion of this Agreement in connection with the assignment, transfer or sale of all or any portion of its interest in the Coronado Generating Station. Any assignees or transferees shall automatically be deemed parties to this Agreement with all the benefits and burdens of this Agreement.

B. SRP may also assign or transfer, without the consent of the Zuni Tribe or of the United States on behalf of the Tribe, up to 7,500 AFA of its water entitlement under this Agreement to tenants or customers of SRP at the Coronado Generating Station Site, which right of assignment or transfer remains effective after generation of power at the Coronado Generating Station permanently ceases. Any assignee or transferee under this paragraph shall automatically be deemed a party to this Agreement with all the benefits and burdens of this Agreement up to a maximum water use of 7,500 AFA.

C. For purposes of this Agreement, power generation at the Coronado Generating Station permanently ceases if all applicable air quality permits are not renewed as a result of the permanent cessation of power generation at the Coronado Generating Station or if the Coronado Generating Station has not generated power at all for 10 consecutive years.

7.8 Zuni Tribe Assignment. The Zuni Tribe or the United States on behalf of the Tribe shall not assign or transfer their interests under this Agreement and any such purported assignment or transfer shall be void. Any obligation made in this Agreement shall not run with the land nor be a benefit to any successor in interest of the Zuni Tribe or of the United States on behalf of the Tribe.

7.9 Amendments. This Agreement may be amended by the written agreement of SRP, the Zuni Tribe, and the United States on behalf of the Zuni Tribe.

7.10 Active Management Areas. If a municipal user, industrial user or other user of underground water within the LCR basin, their instrumentalities or agents, or the State of Arizona or its agencies initiates administrative or judicial action to establish an

Active Management Area, define rights to withdraw and use underground water, or regulate underground water withdrawals in part or all of the LCR basin, the Zuni Tribe, the United States on behalf of the Tribe or SRP may move to intervene in such proceedings to protect its interests.

7.11 Zuni New Mexico Lands. By this Agreement, the Zuni Tribe and the United States on behalf of the Tribe do not waive any rights associated with lands owned by or for the Zuni Indian Tribe in New Mexico or water on those lands.

7.12 Applicable Law. This Agreement and its exhibit, together with the Settlement Agreement, represent the complete and entire agreement of the parties to this Agreement. This Agreement must be interpreted and enforced in accordance with the laws of the State of Arizona and of the United States of America, and must be enforced in the court that administers the Eastern LCR Decree.

7.13 Except where the Settlement Agreement is inconsistent with this Agreement, the Settlement Agreement, including, but not limited to the waivers and retentions of claims in the Settlement Agreement, continues to apply to SRP, the Zuni Tribe, and the United States on behalf of the Tribe.

DATED this 7th day of June, 2002.

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

By William P. Schrad

ZUNI TRIBE OF INDIANS

By Michelle B. Bonnell

UNITED STATES OF AMERICA, AS
TRUSTEE FOR THE ZUNI TRIBE

By Gale A. Norton

EXHIBIT A

LEGEND

SALT RIVER PROJECT
EXCLUSION AREA:

AREA WHERE SRP WILL NOT LOCATE
ANY REPLACEMENT WELLS AND/OR
WELLS DEVELOPED FOR FUTURE USE
OF UNDERGROUND WATER

ZUNI EXCLUSION AREA:

AREA WHERE ZUNI TRIBE WILL NOT
LOCATE ANY REPLACEMENT WELLS
AND/OR WELLS DEVELOPED FOR
FUTURE USE OF UNDERGROUND WATER

ZUNI LANDS

ZUNIFEE SIMPLE LANDS

ZUNI TRUST LANDS

ZUNI PUMPING LANDS

STATE LAND

BLM LAND

SALT RIVER PROJECT LANDS

SRP WELL

